

Small Business Regulatory Fairness Board
Board Meeting
October 6, 2005
Room 750, Harry S Truman Building
Jefferson City, Missouri

Minutes

Board members in attendance: Scott George, Merrill Wade, Nancy Tayborn, Rep. Brian Baker, Randy Angst

Others attending: Sharon Gulick, DED; Daryl Hylton, DED; Laura Avery, DED; Nick Bengston, representing Sen. Louden; Matthew Seeds, representing Sen. Nodler; Tim Hoover of the Kansas City Star

Chairman George welcomed everyone and asked for introductions.

Chairman George provided members with some background on the legislation and the federal initiative that has led to the development of regulatory fairness initiatives in 38 states. He emphasized that most small businesses just want to comply with regulations.

The role of Missouri's Small Business Regulatory Fairness Board (SBRFB) is to foster relationships between agencies and small businesses while "shining a spotlight" on agencies that do not comply with the intent of the legislation, encourage small business input without fear of retaliation, help state agencies comply with the legislation, and to report to the Governor and the General Assembly on agency's approach to small business. The report will be modeled after the report issued by the U.S. Small Business Administration's Office of Advocacy and will grade agencies and make recommendations.

For the Board to be effective we need to:

- Board members need to be generalists -- focus on all state agencies and all industries
- Encourage small businesses to comment and get involved in the rule making process
- Avoid promising adjudicative relief
- Help state agencies understand and comply with the legislation
- Encourage state agencies to communicate with small businesses

Rep. Brian Baker, one of the sponsors of the implementing legislation, said that the intent is not to burden agencies but to create communication lines that allow small businesses to address concerns and problems. He wants the board to advertise to small businesses to communicate who and what the Small Business Regulatory Fairness Board is. This is a great opportunity for Missouri government to show that it can work efficiently and effectively. Rep. Baker also stated that the legislative intent was that state agencies would include small businesses in the drafting of proposed rules before the proposed rule was filed not after.

Mr. George gave a background on federal small business regulatory efforts and small business needs and provided the members with a copy of the most recent federal report.

Members agreed that Missouri would do a similar report. The initial report will focus on just 5 or 6 important issues and grade each state department and/or agency on their efforts to include small business in the rule making process, their responsiveness to small business concerns, etc.

Sharon Gulick, board staff, discussed the two documents she is drafting – one to educate agencies and one to inform small businesses on the intent of the legislation and the responsibilities and requirements outlined in the legislation. She will be scheduling meetings with each state department and/or agency over the next couple of months to make sure that they are aware of the legislation and their requirements. She'll start with those agencies that file the most rules.

Daryl Hylton, DED Legal Counsel, pointed out that the legislation emphasizes looking at rules during rulemaking process. The language specifies what you have to look at for rules passed before legislation and what you have to do for rules passed after legislation.

The members reviewed the specific requirements and definitions in the legislation.

- Legislation defines "small business" as for profit enterprise consisting of fewer than 100 full-time or part-time employees. Question was raised if we receive comments from a larger business or from an association, how do we want to handle that? Will we allow them to testify and comment? Consensus was yes, if their comment or testimony applies to the impact on small business. Ms. Tayborn asked if there was a revenue cut-off in addition to the number of employees -- there is none.
- The chair reminded the members that the Board's scope is limited to state rules and regulations; we have no authority to consider federal or local rules and regulations.
- Staff reported that most agencies are filing a Small Business Impact Statement with proposed rules, but many are not providing the required information in the statement. Sharon informed the group that she and Laura Avery are working on development of a form for the agencies to use. This form, along with the meeting with Sharon, should help agencies better comply with the legislation.
- Chairman George emphasized that the requirement in the legislation that the agency must provide information on "how the agency involved small businesses in the development of the proposed rules" means how they get info from small businesses before the comment period. Agencies have taken a different approach.

Intent of legislation is to involve small businesses before rules are filed. The board briefly reviewed rulemaking process. Lengthy discussion ensued about how we can notify small business of proposed rules before the rule is published in the Missouri Register.

Members felt strongly that it was important that the Board have a way to communicate these proposed rules to the small business community as quickly as possible to provide sufficient time to comment. The member reviewed the Colorado website that allows citizens to sign up for notification of rules that pertain to specific issues. Sharon also provided information on the notification system used by the Missouri Secretary of State's Office. Members felt that the Secretary of State's site was too bureaucratic and was designed for state agency staff not the public. Sharon said that she would meet with Department of Economic Development MIS staff to investigate development of a Board website that would allow interested parties to register to receive notification of proposed rules. One stumbling block will be that the Board does not receive electronic copies of the proposed rule (only the Secretary of State receives the electronic copy) and this would make sending electronic notification difficult.

Question was raised if SBRFB can require that an electronic copy of all proposed rules be filed with the Board as well as the Secretary of State. Agencies are not currently required to do so, but the Board has rule making authority and could propose a rule that would require that an electronic copy of all proposed rules be provided to the board.

Brian Baker moved that the Board issue a rule requiring that in addition to the paper copy currently provided to the Board by state agencies, an electronic copy of the proposed rule and information be submitted to the Small Business and Regulatory Fairness Board at the same time as it is filed with JCAR and SOS. Randy Angst seconded. Motion approved unanimously.

Sharon will work with Daryl Hylton to draft the rule.

The members also reviewed other requirements for state agencies outlined in the legislation. When a state agency holds a public hearing it must submit a small business statement to the board after the hearing is held. This provision does not apply to emergency rule making.

The legislation outlines specific responsibilities for the SBRFB:

- Provide input to state agencies regarding rules that adversely affect small businesses.
- Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency.
- Provide evaluation report to the Governor and General Assembly, including recommendations and evaluations of state agencies, regarding regulatory fairness for Missouri small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board.

Small business owners may request that the board make inquiry into rules issued by state agencies and the board may make recommendations to the state agency. The state agency receiving recommendations from the board shall promptly consider

such recommendations and make file a response with the board within sixty days of receiving the board's recommendations.

In addition, small businesses may file written petitions directly with state agencies. Upon receipt of the petition the agency must forward a copy of the petition to the board and the Joint Committee on Administrative Rules (JCAR). The agency shall determine shall provide a written response to the Board within sixty days outlining their determination.

The Board agreed that for the purposes of our annual report one of requirements for agencies that receive comments or complaints from the board or the public will be the timeliness of their response.

Concern was expressed that the legislation does not specify the time frame for when the agency must forward comments to the Board. Discussion ensued on making the petitions public – e.g., should copies of petitions, comments and testimony be distributed via the Board's notification system? Consensus was that the information was public and the Board has the right to distribute. Agreed that submitter's name would not be included. Board wants notice of petitions to go out – it is up to staff to get it done.

Other provisions in the legislation include:

- Board is allowed to hold hearings and collect public testimony.
- Board has no enforcement authority. Not an adjudicative body.
- Each state agency must, by June 13th of each odd numbered year, submit a list of rules that impact small businesses to the board and general assembly. The first submission will be required on June 13, 2007. The members discussed this provision and felt that these reports should be submitted to the board electronically.

Rep. Brian Baker moved that the report required in Section 536.325.1 be submitted to the Small Business and Regulatory Fairness Board electronically. Merrill Wade seconded the motion. Motion approved unanimously.

Board Outreach to Small Business:

Members discussed avenues to inform and educate small businesses and state agencies on the role of the board, their responsibilities and intent of the legislation.

It was agreed that staff will develop a packet of information that board members can hand out at speeches and public meetings and to provide to the media. It was also agreed that while it is important that we get the word out to as many people as possible, it will be more efficient to go where there are problems -- groups who aren't having problems won't retain the information.

In addition to the packet, it was also requested that staff develop a brochure, comment form (hard copy and electronic), a rolodex card, and a website. Sharon reported that we have a toll free number (866-719-1401) and email SBRFB@ded.mo.gov

The members brainstormed groups and avenues to get the word out on the Board and the legislation:

- Local chambers of commerce
- Missouri State Chamber and its newsletter
- Association newsletters – NAWBO, Minority Business Council, NFIB, MEDC, etc.
- Watch new for stories on businesses with problems and then contact the business
- Missouri Economic Development Conference
- Missouri Venture Capital Forum
- small business expositions
- Missouri Small Business Development Centers and SCORE
- Association of Executive Directors
- Missouri Farm Bureau
- Missouri Association of County Government
- Public Service Announcements (work with DED)

It was also agreed that board members will take responsibility for getting the word out in their geographic area.

Website and auto notification system

Extensive discussion on the what and how of a notification system. The system needs to include proposed rules, petitions, etc. Members agreed that the Colorado system should be the model; if necessary staff should visit with the Colorado program to learn more about how it was designed and if the program could be obtained for use in Missouri. Sharon will talk with the Secretary of State of determine if their site can be modified to meet our needs or if the Board needs to have its own web notification system. Both Ms. Gulick and Ms. Tayborn expressed concerns about the volume of work involved in the creation of a website and where the funding would come from as the Board currently has no direct funding.

State Agencies

Chairman George will set meeting with all state department heads to inform them of the legislation, their agency's responsibilities and the role of the Board either face to face or via conference call. It was also suggested that perhaps the Governor could include this at one of the cabinet meetings or schedule a conference call with all department heads.

Sharon will meet with agency staff that are involved in rule making to educate them on the legislation and their responsibilities. Board members can go along with agencies that are troublesome.

Sharon will meet with Barb Woods, Secretary of State and Cindy Kadlec at JCAR to address any issues and make sure that we are all working toward the same goal.

Public

Public needs to be aware that board exists

Series of news releases on mile stones (website goes up, etc)

Public service announcements

Press

Be cautious of “divide and conquer” they will try to find inconsistencies in statements between board members. Paul Sloca, Communications Director for DED, recommends appointing one person to speak to media on behalf of board – they would work with Paul to make sure we are all saying the same thing. This will probably be Chairman Scott George.

Important that board members not comment on complaints without a board consensus, or comment individually on complaints. Need to have a standard response to questions. Legislators will be asked questions because of their positions. Members should send e-mail to board when someone gets a call – make sure everyone is on the same page. Sharon will have a group email account set up.

Ms. Tayborn suggested having a backup in case the Chairman is unavailable and it was agreed that a Vice Chairman should be appointed and would also be available to talk with the media.

George Scott opened floor for nominations for a Vice Chair.

Ms. Tayborn nominated Randy Angst to serve as Vice Chair. Mr. Wade seconded the nomination. No other names were brought forth. Nomination was approved unanimously.

Initial recommendations to state agencies:

Members discussed what our initial recommendations to the state agencies should be. It was agreed that these recommendations should be things that we can later grade agencies on:

- Agencies should appoint a SBRFB contact that acts as a liaison between agency and board (comments/complaints would go to this person)
- Agencies should provide training to staff regarding small business regulatory fairness rights

Recommendations would be part of outreach to agencies. Ask agencies what they are doing, then suggest recommendations (dialog first, then recommend). How do we grade them based on these recommendations – let them know up front what we will be looking at; maybe grade them more on the law the first year. First year grade as satisfactory/unsatisfactory – then switch to more specific grading (e.g., A, B, C, D, F).

Members discussed various options for grading/evaluating the agencies.

Ms. Tayborn moved to adopt the following recommendations/criteria for 2006 SBRFB evaluation report:

- Agency designated a liaison to the Board.
- The agency Small Business Impact Statement addressed the issues specified in legislation:

- The methods the agency considered or used to reduce the impact on small businesses.
- How the agency involved small businesses in the development of the proposed rules.
- The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used, if such costs are capable of determination.
- A description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected. Exception in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205.
- In dollar amounts the increase in the level of direct costs, such as fees or administrative penalties, and indirect costs, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other cost associated with compliance if such costs are capable of determination. Exception in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205.
- The business that will be directly affected by, bear the cost of, or directly benefit from the propose rules.
- Whether the proposed rules include provisions that are more stringent than those mandates by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.
- How the agency responded to small business comments, including timeliness.
- Agency considered the size of businesses when imposing fines (536.320).
- Provided formal training for their staff – incorporating the goal of non-retaliation for businesses that comment on rules or file petitions with the agency.

Rep. Baker seconded the motion. Motion approved unanimously.

Public Meetings

Members discussed the process they would use with public hearings. It was agreed that one or two state departments or agencies would be invited to testify on their approach to regulatory fairness for small businesses. Members of the public would then have an opportunity to provide comment on these or other agency's performance.

To control the meeting, it was agreed that the following timing would be followed:

- The state department or agency would be given 10 minutes to testify.
- Scheduled businesses (e.g., those that have pre-registered with the Board) would have 5 minutes.
- Walk-ins would be given 3 minutes as time permits.

- Questions and comments from the SBRFB members would be open time with no limitations.
- Members of the public would have the option to submit written testimony.

It was agreed that the first public hearing would be held on January 5, 2006 in Jefferson City. The Department of Natural Resources and the Office of Administration's Division of Purchasing will be invited to testify. The department head and the agency's regulatory fairness contacts will be invited.

Following this hearing we will hold regional meetings – have members that live and work in the area really push the hearing.

Comment Form

Members reviewed the draft public comment form developed by staff. It was agreed that a box for "comment number" would be included to allow members to refer to comments by number rather than the name of the person or business submitting the comment. Board members were reminded that if there is a Sunshine Law request we would have to release name of the submitter. Other changes included adding open text field, require name of state agency to be listed, minor grammatical corrections, add text field for nature of comment and make required field, fax and email not required, etc.

Board agreed that we would not accept an anonymous comment. If we get e-mails or calls they will be directed to the form or sent a form to complete. Those who testify at public hearings would have to fill out a witness form.

Mr. Angst moved to adopt the revised form and Ms., Tayborn seconded the motion. Motion approved.

Annual Report

It was agreed that the Board will issue its annual report by November 1st of each year. Our first report will be issued by November 1, 2006.

Other business

Mr. Hylton reminded the Board that under Missouri's Sunshine Law they are required to post meetings, including conference calls or emails meetings, at least 24 hours in advance of meeting. Sharon, as staff for the Board, has this responsibility.

While the Board is reasonably autonomous, we can't have discussions via e-mail that should take place in a public meeting. Administrative issues and communications with staff are okay, but members can not address complaints/comments outside of a posted public meeting. Private meetings, emails or conference calls that are not posted can not contain decision making process.

Sharon went over how to complete expense reports. Members are reimbursed for actual expenses. There is no per diem for this board.

Sharon requested Bios/Resumes of board members.

Next Meeting:

November 14th via conference call from 2:00 to 4:00 p.m. Sharon will set up the conference call and let members know the number to call. This conference call must be open to the public.

Agenda items:

- Review and approve documents, information Packets
- Update on website
- Update on meetings with state agencies, JCAR and SOS
- Approve this meeting's minutes
- Review proposed rules

Ms. Tayborn moved to adjourn; Mr. Wade seconded. Motion Approved.

Minutes Approved: November 14, 2005